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Firstsource Advantage, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GREGORY DANAHER,

Plaintiff,

vs.

FIRSTSOURCE ADVANTAGE, LLC,

Defendant.

Case no. 2:13-cv-00128-APG-PAL

**DEFENDANT FIRSTSOURCE ADVANTAGE,
LLC'S OPPOSITION TO PLAINTIFF
GREGORY DANAHER'S (1) MOTION TO
AMEND COMPLAINT & (2) MOTION
REQUESTING AN EXTENSION OF TIME**

Defendant Firstsource Advantage, LLC hereby submits its Opposition to Gregory Danaher's (1) Motion to Amend Complaint¹ and (2) Motion Requesting an Extension of Time².

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¹ Docket no. 18.

² Docket no. 19.

1 1. The deadline to amend the pleadings was June 4, 2013 pursuant to this Court's
 2 Scheduling Order dated April 10, 2013³. Where a scheduling order sets a deadline to amend the
 3 pleading and the deadline has passed, the policy that leave to amend should be freely given no longer
 4 applies: A showing of good cause is required.⁴ Plaintiff jointly selected this proposed deadline⁵ and has

5 2. Plaintiff has already served two subpoenas and five sets of discovery in this lawsuit.
 6 Substantial further discovery will be necessary if Plaintiff is permitted to add claims under the Fair
 7 Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq. and the Telephone Consumer Protection Act
 8 ("TCPA"), 42 U.S.C. § 227. Plaintiff also indicates that he intends to add additional parties to this
 9 lawsuit but cannot yet identify them suggesting that further amended pleadings will be necessary⁶. As a
 10 practical matter, Plaintiff's proposed amended complaint will prejudice Firstsource Advantage by
 11 requiring another round (or two) of pleadings, additional discovery including possible unknown
 12 defendants, and an overall delay the resolution of these proceedings.

13 3. Plaintiff's proposed FCRA claim fails as a matter of law and is therefore futile⁷. Plaintiff
 14 alleges that Firstsource Advantage lacked a permissible purpose to pull his credit report under the
 15 FCRA in violation of 15 U.S.C. § 1681b⁸. Debt collection is a permissible purpose to review a debtor's
 16 credit report where the underlying debt arises from a voluntary credit transaction⁹. Plaintiff pleads
 17 himself out of a cause of action by admitting that Firstsource Advantage is a debt collector attempting
 18 to collect a debt on behalf of FIA Card Services and Bank of America¹⁰.

19 4. Plaintiff's proposed TCPA claim fails because Firstsource Advantage never contacted
 20 Plaintiff using a dialer and is futile for that reason¹¹.

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23 ³ Docket no. 16, p. 3.

24 ⁴ *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000).

25 ⁵ Docket no. 15, p. 3.

26 ⁶ Motion to Amend, p. 5.

27 ⁷ *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2010).

28 ⁸ Motion to Amend, pp. 14-15, ¶ 53.

⁹ 15 U.S.C. § 1681b(a)(3)(A); *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 674 (9th Cir. 2010); *Rodriguez v. Calvalry Portfolio Servs., LLC*, No. 3:11-cv-01837-LAB-MDD, 2012 U.S. Dist. LEXIS 30295, *2-3 (S.D. Cal. Mar. 6, 2012).

¹⁰ Motion to Amend, pp. 10 & 14, ¶¶ 13 & 46.

¹¹ *Carrico*, 656 F.3d at 1008; Declaration of Melissa Kotas.

1 Firstsource Advantage respectfully requests that Plaintiff's Motions for Leave to Amend and for
2 an Extension of Time be denied.

3 Dated this 5th day of June, 2013.

4 COOPER LEVENSON APRIL
5 NIEDELMAN & WAGENHEIM, P.A.

6 By: /s/ Gregory A. Kraemer
7 Jerry S. Busby
8 Nevada Bar No: 001107
9 Gregory A. Kraemer
10 Nevada Bar No: 010911
11 6060 Elton Avenue, Suite A
12 Las Vegas, NV 89107
13 Attorneys for Defendant
14 FIRSTSOURCE ADVANTAGE, LLC
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DECLARATION OF MELISSA KOTAS

I, Melissa Kotes, declare as follows:

1. I am the Dialer Operations Manager for Firstsource Advantage, LLC. I am submitting this Declaration in support of Defendant Firstsource Advantage, LLC's Opposition to Gregory Danaher's (1) Motion to Amend Complaint and (2) Motion Requesting an Extension of Time. I have personal knowledge of the facts set forth in this Declaration and if called as a witness, I could and would competently testify to them.

2. I have worked in the dialer operations position for this company for the past ten (10) years.

3. I am the individual employed with Firstsource Advantage, LLC that has equal to or more knowledge than any other individual in the company regarding the operations of the company's predictive dialer hardware and software as well as how this information is reflected on the collection activity notes.

4. I have taken an opportunity to review the account notes for the Plaintiff Gregory Danaher to determine whether any communication directed to him was initiated by our predictive dialing system.

5. Based on my review of Plaintiff's account notes, I have concluded and represent under oath hereto, that Mr. Danaher was never contacted by Firstsource Advantage's predictive dialing system based on the entries contained in the collection notes.

6. I based my opinion on the fact that the call entries were manually dialed since the notes do not reflect the action code "ADIAL" which would indicate that the call was initiated with our predictive dialer.

7. Further confirmation of my opinion is based on a review of other documentation which indicates that the subject account was never submitted or loaded for a predictive dialer campaign.

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1 I declare under penalty of perjury under the laws of the United States of America and the State
2 of Nevada that the foregoing is true and correct.

3 Executed this 5th day of June, 2013, at Amherst, New York.

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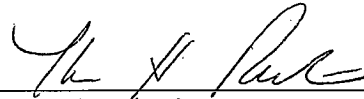
7 Melissa Kotas
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of COOPER LEVENSON APRIL NIEDELMAN & WAGENHEIM, P.A. and that on this 6th day of June, 2013, I did cause a true copy of the foregoing **DEFENDANT FIRSTSOURCE ADVANTAGE, LLC'S OPPOSITION TO PLAINTIFF GREGORY DANAHER'S (1) MOTION TO AMEND COMPLAINT & (2) MOTION REQUESTING AN EXTENSION OF TIME** to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

Gregory Danaher
7901 Quill Gordon Avenue
Las Vegas, NV 89149
Plaintiff in Proper Person

By



An Employee of
COOPER LEVENSON APRIL
NIEDELMAN & WAGENHEIM, P.A.